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24 July 2002

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 3 of the provisional agenda

ADMINISTRATION OF JUSTICE

Written statement* submitted by Japan Fellowship of Reconciliation,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 July 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 3 4 9 *
ENG

JFOR in cooperation with the Osaka Bar Association wishes to draw the attention of the Sub-Commission on the Promotion and Protection of Human Rights to the systematic violations of the International Covenant on Civil and Political Rights by the Supreme Court of Japan.

1. Sequence of Events of Tokushima Prison Interview Obstruction Incident

When Masao Kitano, who had been sentenced in April of 1990 to 15 years of penal servitude for murder, was transferred from Osaka Detention Center to Tokushima Prison in Japan, prison guards beat him for no reason.

When Mr. Kitano met to consult with his attorney regarding this beating damage case, Tokushima Prison uniformly limited interviews to 30 minutes according to Article 121 of the Prison Law Enforcement Regulations[1] and had a prison guard be present at the interviews according to Article 127,[2] paragraph 1 of the Prison Law Enforcement Regulations.

On August 21, 1991, Mr. Kitano and three attorneys filed a suit demanding damages against the Government of Japan for interference with interviews. This is the Tokushima Incident.

2. Judgment of the Tokushima District Court

On March 15, 1996, the Tokushima District Court rendered a judgment granting damages, finding that the Tokushima Prison's 30-minute time limitation on interviews was a violation of Article 14 of the ICCPR which guaranteed the right to a fair civil trial.[3]

3. Judgment of the Takamatsu High Court

The Takamatsu High Court handed down its judgment on appeal on November 25, 1997.[4] In the decision, the Court presented the following detailed interpretation of the ICCPR.

(1) As with the District Court, the High Court found that the ICCPR was directly applied within Japan.

(2) Since the European Convention of Human Rights is considered important as a regional human rights treaty endorsed by the majority of European nations and it has a close relationship with the ICCPR, the case law of the European Court of Human Rights with respect to this Convention, can serve as guidelines in interpreting Article 14, Paragraph 1 of the ICCPR notwithstanding the definitions in Article 31, Paragraph 3 of the Vienna Convention on the Law of Treaties.[5]

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1 Prison Law Enforcement Regulations, Article 121: The time of interview shall be 30 minutes or less, except with a criminal defense counsel

2 Prison Law Enforcement Regulations, Article 127:

1 Prison guards shall be present at an interview except in case of an interview between a criminal defendant and its defense counsel.

2 (omitted)

3 The prison warden may allow an interview without a guard when he finds it necessary for education or otherwise.

3 1597 Hanrei Jiho 115

4 977 Hanrei Times 65

5 Article 31.3:There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the

(3) The Takamatsu High Court stated that the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (U.N. resolution) were significant as international standards for persons detained or imprisoned, and thus were guidelines in interpreting Article 14, Paragraph 1 of the ICCPR in spite of not coming under Article 31, Paragraph 3 (b) of the Vienna Convention on the Law of Treaties,[6] since this Body of Principles were drafted by experts as 'principles that can be adopted without much difficulty by almost all nations, without regard to legal system or degree of economic development' and actually were adopted upon prudent deliberation and without substantial opposition.

Based on the foregoing, the Takamatsu High Court held that in light of the judgment of the European Court of Human Rights in Campbell & Fell v. the United Kingdom[7] as well as the Principle 18[8] of the U.N. Body of Principles, Article 14, Paragraph 1 of the ICCPR guarantees the equality between the parties which entails the right of prisoner to interview with his attorney for a civil lawsuit and that the Tokushima Prison's imposition of the presence of a prison guard and the 30-minute time limitation on an interview between a prisoner and his attorney were unlawful as violation of Article 14 of the ICCPR, thus upholding the Tokushima District Court's approval of damages.

4. The Supreme Court Judgment

The First Petty Bench of the Supreme Court of September 7, 2000 reversed the judgments of the Tokushima District Court and the Takamatsu High Court and rejected the claims for damages of Mr. Kitano and his attorneys based on the following reasoning. Article 121 and Article 127, Paragraph 1 of the Prison Law Enforcement Regulations, which comprise the statutory foundation for the above-mentioned interview restrictions, do not violate Article 13 (respect for individuals) or Article 32 (right of access to the courts) of the Constitution. The Court found this to be clear by reference to cases such as the Judgment of the Supreme Court (Grand Bench) of September 16, 1970[9] and the Judgment of the Supreme Court (Grand Bench) of June 22, 1983.[10] Further, the Court found that these provisions

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application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties

6 supra note 5

7 Judgment of June 28, 1984: It held that English prison's having prison guards present at prisoner-attorney interviews for civil proceedings violated Article 6 (equivalent of Article 14 of the ICCPR).

8 Principle 18:

1 A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2 A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3 (omitted)

4 Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5 (omitted)

9 24/10 Minshu 1410: It is held that prohibition on inmates' smoking by the Prison Law Enforcement Regulations with a view to maintaining the prison order does not violate Article 13 (respect for individuals) of the Constitution.

10 37/5 Minshu 793: It is held that imposing a certain restriction on inmates' reading of newspapers by the Prison Law Enforcement Regulations with a view to maintaining the prison order violates neither Article 13 (respect for individuals), Article 19 (freedom of thoughts and conscience), nor Article 21(freedom of expression)

were not in violation of Article 14 of the ICCPR. Moreover, the question of whether, in a particular case, an interview in excess of 30 minutes would be permissible or a prison guard would be present was entrusted to the discretion of the prison warden, who was familiar with the circumstances inside the prison. And the prison warden's decision could not amount to an unlawful act in the absence of an abuse of discretion.

However, the Supreme Court did not in any way make clear the reasons why the above-mentioned provisions of the Prison Law Enforcement Regulations do not violate the ICCPR. The Court's incomprehension of or disregard for the ICCPR is evident.

5. The Supreme Court of Japan's Half-hearted Stance on the ICCPR

The tendency of the courts of Japan, especially the Supreme Court, to try to avoid passing judgment on international human rights treaties, including the ICCPR, is remarkable. Cases in which international human rights treaties, especially the ICCPR, are invoked in the courts have become widespread in Japan since the 1980s, but the Supreme Court has failed to deal squarely and earnestly with the issue. The above Tokushima Incident decision is a typical example of finding no violation of the ICCPR without stating any reasons.

The Government of Japan, in its fourth periodic report to the Human Rights Committee, stated that in no case did the Supreme Court find that laws, regulations and measures were in violation of the ICCPR.[11] However, the Human Rights Committee, in its concluding observations adopted November 5, 1998, just after reviewing this report, pointed out 29 subjects of concern and recommendations against Japan.[12] The fact that the Supreme Court found no case in violation of the ICCPR in a country with this many human rights problems is evidence that the Court is not earnestly applying the ICCPR.

The Supreme Court's treatment of the ICCPR here violates the duty prescribed in Article 2, Paragraph 3 to develop the possibilities of judicial remedy.

Accordingly, we hereby request that the Supreme Court of Japan be strongly recommended by the UN to sincerely apply the ICCPR to cases before it.

Further, we would add that, although Japan ratified the ICCPR, it has not ratified the Optional Protocol thereto. Consequently, an individual whose rights under the Covenant have been violated can seek no relief by submitting a communication to the Human Rights Committee.

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11 Paragraph 10 of Japan's fourth periodic reports, CCPR/C/115/Add. 3
12 CCPR/C/79/Add. 102

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25 July 2002

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
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Item 6 of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

Written statement* submitted by Japan Fellowship of Reconciliation,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201439 8*

ENG

"Comfort Women": Systematic rape, sexual slavery and slavery-like practices

JFOR, in cooperation with Ms. OKAZAKI, Tomiko, Ms. MADOKA, Yoriko, Ms. CHIBA, Keiko, Ms. YOSHIKAWA, Haruko, Ms. HATTA, Hiroko, Ms. OWAKI, Masako, Ms. TAJIMA, Yoko, who are Members of the House of Councilors of the Japanese National Diet, wishes to draw the attention of the High Commissioner for Human Rights and the Sub-Commission to the following information.

For the first time in history[1], on 18 July 2002, the Committee on Cabinet Affaires of the House of Councilors of the Diet of Japan started its substantial deliberation on a Bill, "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coersion Act" [23].

The followings are Ms. OKAZAKI's oral statement representing the above mentioned Diet Members before the Committee:

I would like briefly to explain the Bill, "Promotion of a Resolution for Issues Concerning Victims of Wartime Sexual Coercion Act", which has just been mentioned.

With the last War more than half a century behind us, we entered the 21st century. However, our neighbors in Asia who, from our invasion and/or colonization in the past, have suffered greatly still have mixed feelings about our nation; they are still skeptical of and uneasy about us. One of the causes of this misgiving among our neighbors about our nation is the unresolved issue concerning so-called comfort women. As so-called comfort women, we designate a group of Asian women, including underage girls, whose dignity and honor have been deeply hurt since, either cajoled or coerced, they were taken to comfort stations against their will, and were forced into sexual slavery during the last War by the Imperial Japanese Army and Navy.

After WW2, it was in June 1990, during a hearing held at the Budget Committee of the Japanese House of Councilors that issues concerning comfort women came to be recognized as social problems for the first time. During the hearing, we demanded that the government look into the matter. The first response we got from the government was that it was impossible for the Japanese government to investigate the alleged case because it was a matter of private companies. This response was met by a strong criticism from countries such as South Korea.

Later, the government did conduct a research. And in August 1993, it admitted its military's involvement in the sexual slavery case for the first time, and expressed its remorse for the matter of comfort women, and apologized for it. When it came to the compensation of victims, however, the government claimed that it had no obligation to do so because it had already settled the matter when San Francisco Treaty and other bilateral treaties were signed.

From an international point of view, this attitude taken by Japanese government is certainly problematic. UN has actively been discussing the comfort women case as a big issue since it first took the issue up at the Commission on Human Rights of the United Nations in February 1992.

A special attention is to be paid to a report made by Ms. Radhika Coomaraswamy, a special rappporteur on the violence against women, during the Commission of Human Rights in January 1996 and another made by Ms.Gay J. McDougall, UN special rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1998, wherein they found that Japanese government was legal responsibility for the wartime sexual slavery and demanded that Japan make a state-level compensation for the victims. These reports have been welcomed by delegates from the participating countries.

Moreover, the ILO's Committee of Experts on the Application of Conventions and Recommendations has repeatedly, four times in total, admonished that Japanese government should compensate the victims, claiming that issues concerning comfort women violated ILO Convention 29.

But, in July 1995, Japanese government, claiming that it would fulfill its moral responsibility, established "The Asian Women's Fund" (the AWF), a private fund with money donated by Japanese citizens in order to pay "sympathy money" (a gift of money in token of one's sympathy) to the victims, and thereby evading its legal responsibilities as a state. However, this project of atonement has been criticized and its money rejected by many victims.

In April 1998, government of Republic of Korea, with a view of rejecting the AWF's money, paid the former comfort women approximately 3 million yen per person.

Taiwanese authorities took a similar measure: it paid about 2 million yen per person to the victims as an advance of prospective compensation from Japanese government, and is still seeking an apology and a state compensation.

In the Philippines, a resolution seeking Japanese government's apology and compensation was brought up in both the upper and lower Houses in November last year.

In Indonesia, the "sympathy money" has not been distributed among the victims at all, and our investigations have revealed that victims and the government were seeking compensation on individual basis.

Under these circumstances, in view of the peaceful principles of our Constitution, we, as a nation living among many others in Asia, have submitted this bill, thinking that it is necessary for us to bring about a swift resolution of the issues concerning comfort women. In doing so, we recognize that it is imperative for us to provide with remedies for victims admitting the state-level responsibilities and a general framework for solving these issues clarifying Japan's stance towards the issues concerning comfort women. We believe that this bill, if approved and enacted, will help the Diet to perform its duties, which the 1998 Judgment[4] by Shimonoseki Branch of Yamaguchi District Court pointed out finding that the Diet had failed to accomplish.

Next, I would like to summarize the gist of the bill.

First of all, in view of the fact that prior to and during World War II, with the involvement of the Imperial Japanese Army and Navy, organized and prolonged coercion of sexual acts were carried out against women and, because of such coercion, the dignity and honor of the women were severely violated and considering that it is the imperative task for the nation of Japan, under its responsibility to take quick steps to restore the honor of the women, the objectives of this Act lie in providing the necessary fundamental grounds for the resolution of the issues concerning the victims of wartime sexual coercion and, by doing so, in improving the trustworthy relationship between the peoples of the concerned nations and our people and in making it possible for our country to occupy an honored place in international society.

To avoid a misunderstanding likely to result from using the term "comfort women," which does not reflect the victims' situation very well, we have decided to opt for "the victims of wartime sexual coercion".

Secondly, the government must, without fail, express an apology for the violation of the honor and dignity of the victims of wartime sexual coercion and implement necessary measures to restore their honor as soon as possible. The measures shall include monetary payment to the victims of wartime sexual coercion.

Thirdly, the government must establish fundamental policies on measures for the resolution of the issues concerning the victims of wartime sexual coercion. Whenever the government establishes fundamental policies or implements changes in existing fundamental

policies, it shall report them to the Diet and make them public.

Every year, the government shall report to the Diet on the measures that it has implemented for the resolution of the issues concerning the victims of wartime sexual coercion and on the findings produced by the investigation as stated in and it shall also publicly announce the summary of the report.

The Council for Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion shall be established at Naikakuhu (the Ministry of the Cabinet) in order to (1) outline the draft fundamental policies, 2) to arrange the necessary coordination of the pertinent administrative institutions regarding measures to resolve issues concerning the victims of wartime sexual coercion, and (3) to promote the investigation.

Lastly, this Act shall be enacted in no later than one month after its promulgation, and the date for its enactment shall be decided according to an ordinance. The act shall expire on the day ten years after its enactment.

These are the motives for submitting this Act and I have given its gist. The people who have gone through inexpressible sufferings and never recovered from the pains, both physical and mental, are welcoming and looking forward to seeing the day when this Act will come into existence.

We hope that you will carefully deliberate on this matter, and quickly support our cause. Thank you.

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[1] Yahoo News/Asscociated Press, "Parliament discusses bill for official reparations to wartime sex slaves", Jul 18, 2001, 2:37 AM ET.

[2] Totsuka, Etsuro, "Peace Treaty and Japan's Wartime Responsibility", HV Informationsschriften, 1/2002, pp.43-46.

[3] E/CN.4/Sub.2/2001/NGO/24.

[4] Totsuka, Etsuro, "Commentary on a Victory for "Comfort Women", Pacific Rim Law & Policy Journal, Vol.8(1999), No.1, pp.47-61.

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Item 6 of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

Written statement* by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201441 6*
ENG

TERRORISM AND HUMAN RIGHTS

1. The Association for World Education warmly welcomed Resolution 2001/18. Terrorism and Human Rights, and the ongoing work of the Special Rapporteur, Ms. Kalliopi Koufa.

2. Fully "*Convinced* that terrorism, in all its forms and manifestations, wherever and by whomever committed, can never be justified in any instance, including as a means to promote and protect human rights," the Association for World Education is making available to the Sub-Commission and to the Special Rapporteur - in the form of this written statement - the "Urgent Appeal" delivered to the High Commissioner for Human Rights on 26 June 2002. It is a brief analysis of what is commonly called "Suicide-bombings," but which, in fact, should be understood and correctly designated as Martyrdom-bombings or *Jihad*ist-bombings.

URGENT APPEAL TO THE HIGH COMMISSIONER FOR HUMAN RIGHTS — Mrs Mary Robinson
26 June 2002

"MARTYRDOM-BOMBINGS"/"JIHADIST-BOMBINGS"

In your recent comment in the *Los Angeles Times* ("After Sept. 11: Human Rights are as important as ever," republished in the *International Herald Tribune*, 21 June 2002), you reaffirmed, inter alia, in relation to the coming into force of the statute of the International Criminal Court:
"*The Sept. 11 attacks were mainly aimed at civilians. They were ruthlessly planned, and their execution timed to achieve the greatest loss of life. Their scale and systematic nature qualify them as crimes against humanity within existing international jurisprudence. There is a duty on all states to find and punish those who plan and facilitate such crimes.*"

On 15 March 2002, at the Palais des Nations, you addressed the Organisation of Islamic Conference Symposium on Human Rights in Islam, and you stated, *inter alia*:
"*This Symposium can help put to rest misconceptions about Islam. Education and information are key elements in combating intolerance and bigotry. [...] No one can deny that at its core Islam is entirely consonant with the principle of fundamental human rights, including human dignity, tolerance, solidarity and equality. Numerous passages from the Qur'an and sayings of the Prophet Muhammad will testify to this. [...] And no one can deny the acceptance of the universality of human rights by Islamic States. [...] Islamic communities need to become more active in countering ignorance through offering positive information on Islamic beliefs. Prejudice and misperception feed on ignorance and this needs to be confronted, especially through the mass media, with the truth. Muslims themselves have a key role in such efforts and I encourage thinking on how this can be done*

The 57 Member Countries of the OIC are currently meeting in Khartoum (Sudan) at their 29th ordinary ministerial session (25-27 June), whose theme is "Solidarity and Dialogue."

In this context, we wish to draw your attention to an important historical fact: the term "suicide bomber" to designate the perpetrators of the 11 Sept. horrors - and all other such religiously-inspired crimes against humanity - is basically flawed in Islamic jurisprudence.

An eminent scholar and English translator of Ibn Khaldoun's *The Muqaddimah* wrote:
"[T]*he great authorities of the hadit leave no doubt as to the official religious attitude of Islam. In their opinion suicide is an unlawful act.* [...] *On the other hand, death as the result of "suicidal" missions and of the desire for matyrdom occurs not infrequently, since death is considered highly commendable according to Muslim religious concepts. However, such cases are no*[t] *suicides in the proper sense of the term.*"
(Franz Rosenthal: "On Suicide in Islam" in *Journal, American Oriental Society* (1946) 66: 243, 256)

This scholarly assessment was confirmed on 4 April 2002 by the highest recognized spiritual leader in the Muslim Sunni world, who thereby reversed the position he had reportedly taken at the 21 January 2002 "Alexandria Declaration at the Conference of Religious Leaders of the Holy Land":

"*The great Imam of Al-Azhar, Sheikh Muhammad Sayyed Tantawi, demanded that the Palestinian people, of all factions, intensify the martyrdom operations against the Zionist enemy, and described their martyrdom as the highest form of jihad. He says that the young people executing them have granted Allah the most precious thing. He emphasized that every martyrdom operation against any Israeli, including women, children and teenagers, is a legitimate act according to religious law, and an Islamic commandment...*"

www.lailatalqadr.com/stories/n040401.shtml (4 April 2002); English trans. in MEMRI report of 8 April 2002. Special Dispatch-Egypt/Jihad & Terrorism Studies, 7 April, N° 363/www.memri.org]

This declaration appears to align the position of Sunni Islam with that of Shi'a Islam today -on "martyrdom" as the highest form of the *jihad*-war. One recent example will suffice. On 5 April 2002 (Friday prayers, Teheran University), Iran's spiritual leader Ayatollah Ali Khamanei declared: "*Anyone who chooses the way of Allah and becomes a martyr remains - his legacy and personality remain...But anyone who does not follow the path of self-sacrifice - his body may remain several mornings, but his personality and identity will vanish.*"(MEMRI Spec. Dispatch-Iran,10/4/02 N°365)

For a recent secular comment, Dr. Iyad Sarraj, a Palestinian psychiatrist in Gaza City, stated, "*They are creating a new kind of culture.(...) Once you create such a culture, you create something automatic." (...) even he could not challenge the social acceptance of this ideal by directly criticizing the martyrs themselves. "You can say, 'I condemn terror, I condemn killing civilians,' but you can't say, 'I condemn martyrs,' because martyrs are prophets.*"(James Bennet "The New Suicide Bombers: Larger and More Varied Pool," *New York Times*, 21 June; abridged, in the *IHT* of 22-23 June 2002)

As a confirmation of Dr. Sarraj's statement, on 19 June 2002 the Palestinian daily *Al-Quds* (English trans. in the PA's *The Jerusalem Times*, 20 June) carried "A Palestinian Communiqué Against Martyrdom Attacks," and again on 21 June, when it had been signed by 315 prominent Palestinians, including Sari Nusseibeh and Hanan Ashrawi. It stated that it "*was published with funding provided by the European Union for the popular peace campaign*". But this communiqué -strongly criticized by Hamas on its website, and elsewhere - does not condemn the "martyrdom attacks" on civilians, either on ethical or religious grounds. The concluding paragraph makes the main, pragmatic point: "*Military operations can be judged to be positive or negative only by the extent to which they realize political goals.*"

At various meetings in Beirut, Cairo, and Kuala Lumpur in April 2002, the Arab League and the OIC did not condemn "martyrdom-bombings"/"jihadist-bombings," nor since. On the contrary, art. 10 of the Kuala Lumpur "Declaration on International Terrorism" (3 April) does not even define terrorism, as we pointed out in a Statement to the UNCHR on 18 April (pm). Yet, article 4 states: "*We affirm our commitment to the principles and true teachings of islam, which abhore aggression, value peace, tolerance and respect, as well as prohibiting the killing of innocent people.*"

Before "martyrdom-bombings," based on an "ideology of jihad," become contagious globally, we call on you, in your capacity as High Commissioner for Human Rights, to address urgently this grave matter on this occasion of the OIC's Khartoum "Solidarity and Dialogue" meeting. On 15 March your Statement to the OIC Human Rights Symposium concluded thus:

"We need to reflect on a common challenge. How do we move from the conceptual discussion of respect for human dignity and fundamental rights to the plane of implementation? At the national level, how do we institutionalise human rights protections within the framework of accepted human rights standards. These are but two of the issues that more dialogue and more understanding can fruitfully address."

The Association for World Education strongly believes that this very grave issue of "martyrdom-bombings"/"jihadist-bombings" (misnamed "suicide-bombings"/suicide bombers") can no longer be avoided. All Muslim leaders, both spiritual and secular, particularly the OIC, should speak out unequivocally in order to make it crystal clear to the world - to Muslims and non-Muslims alike - that, today, such a religious interpretation of this historical "jihad-war ideology" is in total contradiction with both the International Bill of Human Rights and with Humanitarian Law. This "Culture of Hate"-"Culture of Death" must be outlawed now.

René Wadlow
(Main Representative)

David Littman
(Representative)

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29 July 2002

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COMMISSION ON HUMAN RIGHTS
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Fifty-fourth session
Item 6 (c) of the provisional agenda

OTHER HUMAN RIGHTS ISSUES: OTHER ISSUES

Written statement* submitted by the World Union for Progressive Judaism, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 4 1 8 *

ENG

The Genocidal Charter of Hamas

1. Recognizing that the right to life is a right from which all other rights flow, the worst crime against humanity is premeditated GENOCIDE! Article III (a) (b) and (c) of the 1948 Genocide Convention state that the following acts are punishable: Genocide; Conspiracy to commit genocide; and Direct and public incitement to commit genocide.

2. The premeditated terrorist massacre by Hamas on the Jewish Passover of 2002 needs to be seen in its true context. The current Islamist "*jihad* ideology" is part and parcel of the 1988 Charter of Hamas, inspired by Sheikh Ahmed Yassin, its founder and spiritual leader.

3. Just after his return to Gaza to a rapturous reception in October 1997, Sheikh Yassin declared that Israel must "disappear from the map." He also said: "We have an aim and an enemy, and we shall continue our *jihad* against the enemy. A nation without *jihad* is a nation without a purpose." (*AP*, 22 October 1997). In February 1998, Sheikh Yassin toured the Gulf region for three months, visiting over a dozen Arab countries. Everywhere he went he preached in mosques, while his official audiences were broadcast on television. Since then, he has repeated his politicidal/genocidal goal.

4. Last year, an alliance was declared between Chairman Arafat's Palestinian Authority and Hamas that resulted in the freeing of all convicted Hamas terrorists. In March 2002, Fatah's Al-Aqsa Martyrs Brigades recently joined Hezbollah, Islamic Jihad, and Hamas on the U.S. list of world terrorist groups. It immediately sent a girl *jihad*ist-bomber to kill and maim on a Sabbath eve in Jerusalem, followed 24 hours later by a male *jihad*ist-bomber in Tel Aviv. The families of *jihad*ist-bombers receive a cheque of $25,000 from Saddam Hussein.

5. Hamas is the acronym for "Islamic Resistance Movement", whose meaning, is "fanaticism". The Hamas Charter offers stereotype images, perpetuated in a Culture of Hate. Aside from the usual mad gibberage inspired by *The Protocols of the Elders of Zion*, it is committed to a genocidal *jihad* ideology against "the Jews," and this Culture of Hate is repeated again and again in official sermons at mosques in Gaza and elsewhere, which are shown on the official television of the Palestinian Authority.

6. Religious justification is provided for this genocidal ideology by a controversial *hadith* - now a commonplace slogan with Islamists worldwide - which is the conclusion to article 7 of the Charter: "*...The Prophet, Allah bless and grant him salvation has said: 'The Day of Judgment will not come until Muslims will fight the Jews, until the Jews hide behind rocks and trees, which will cry: O Muslim! O Abdullah*! (Slave of Allah!) *there is a Jew behind me come on and kill him...*"

7. Article 8 is the slogan of the Hamas Movement inducing its adepts to kill infidels in the name of Allah when called upon: "*Allah is its goal, the Prophet its model, the Qur'an its Charter, jihad its path, and death for the cause of Allah its most sublime belief.*

8. Article 13 states: "*There is no solution for the Palestinian question except through jihad. All initiatives, proposals and international conferences are a waste of time and vain endeavours.*" The message in Article 28 illustrates vividly the genocidal terror aim of the *jihad*ist bombings: *"Israel, Judaism and Jews challenge Islam and the Muslim people: 'May the cowards never sleep*'!"

9. Article 2 of the Charter insists that Hamas is a wing of the international Muslim Brotherhood, founded in Egypt in 1922. On 18 March 2002, a Muslim Brotherhood event assembled 1'000 fanatics at Egypt's Al-Azhar University - "different than all previous demonstrations". They heard Hamas leader Sheikh Yassin's voice calling on them to take the *jihad* path. An Egyptian candidate was reported as

saying that he was "*one of the first of the martyrs* [*jihad*ist-bombers] *to choose to die in order to defend the Muslim Palestinian people.*" (*Al-Mustaqbal*, Beirut, 19 March 2002, English trans. by MEMRI Special Dispatch-Egypt/Jihad and Terrorism Studies N° 358, 22 March 2002: www.memri.org).

10. On 4 April 2002, the highest Sunni spiritual leader issued a religious ruling from Al-Azhar: "*The great Imam of Al-Azhar, Sheikh Muhammad Sayyed Tantawi, demanded that the Palestinian people, of all factions, intensify the martyrdom operations against the Zionist enemy, and described their martyrdom as the highest form of jihad. He says that the young people executing them have granted Allah the most precious thing. He emphasized that every martyrdom operation against any Israeli, including women, children and teenagers, is a legitimate act according to religious law, and an Islamic commandment...*" (www.lailatalqadr.com/stories/n040401.shtml (4 April 2002); English trans. in MEMRI report of 8 April 2002. Special Dispatch-Egypt/Jihad & Terrorism Studies, 7 April, N° 363/www.memri.org)

11. A written Charter or Constitution cannot simply be ignored. Hitler understood this when he wrote in the 1924 preface to *Mein Kampf*: "*The unity and uniformity of a doctrine can only be safeguarded if it has been fixed forever in a written text.*" Few people bothered to read *Mein Kampf* then and fewer still have bothered to read the Hamas Charter. It is high time that this be done now.

12. In a Report last year (E/CN.4/2001/114, §24), the High Commissioner for Human Rights referred to "hate speech and incitement. She was shocked by calls, broadcast on Palestinian television and radio, urging the killing of all Jews." At Durban, she identified personally with "Jews", who were being vilified en bloc (as in the 1930s), an act that has tarnished the United Nations indelibly.

13. The World Union for Progressive Judaism again calls on the High Commissioner for Human Rights - and this Sub-Commission - to address a solemn appeal to Muslim spiritual and secular leaders to condemn this *jihad* ideology. Such a condemnation should include the Hamas genocidal Charter.

14. The current policy of silence - on such a grave religious issue - by Muslim spiritual and secular leaders from the Member States of the Organization of the Islamic Conference (OIC), as well as from the international community, on this "Ideology of *Jihad*" implicitly condones as normative a great evil of our time, thereby encouraging future *jihad*ist-bombers, whose actions should be considered by Muslims and non-Muslims alike as a defamation of Islam.

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Sub-Commission on the Promotion
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Fifty-fourth session
Item 4 and 5 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS
PREVENTION OF DISCRIMINATION

Written statement* submitted by the World Union for Progressive Judaism, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0202014420*

ENG

Jewish refugees from Arab countries – the forgotten millions

1. In the chronic Middle East tragedy, where a key stumbling block has always been the question of the return of, or compensation for, Arab refugees from Palestine, the time has come for the international community to remember the other victim - the forgotten millions of Jewish refugees from Arab countries.

2 In 1945, there were 140,000 Jews in Iraq; 60,000 in Yemen and Aden; 35,000 in Syria; 5,000 in Lebanon; 90,000 in Egypt; 40,000 in Libya; 150,000 in Algeria; 120,000 in Tunisia; 300,000 in Morocco, including Tangiers (a total of 940,000, plus a further 200,000 living in Iran and Turkey). Of these ancient Jewish communities, less than 40,000 remain today out of the total population of about 1.2 million. In the Arab world (i.e. not counting Turkey and Iran), their number is under 2,000, down from roughly one million 50 years ago. In the 20th century, thousands of Jewish men, women and children, the young and the old, were brutally massacred in Iraq, Syria, Egypt, Libya, Aden, and the Maghreb (often under British or French colonial rule), and also in Palestine during the British Mandate.

3. As to how these countries became *Judenrein* ("cleansed" of Jews) since the 1940s, a key article, "Jews in Grave Danger in all Moslem Lands," published in the *New York Times* of 16 May 1948, speaks volumes (a recent collective book provides details: see Malka Shulewitz (ed.), *The Forgotten Millions. The Modern Jewish Exodus from Arab Lands* (1999).

4. In her latest study, *Islam and Dhimmitude. Where Civilizations Collide* (2002) (www.dhimmi.org), Bat Ye'or refers to the *Times* article and quotes an appeal from the President of the World Jewish Congress, Dr. Stephen Wise, to the U.S. Secretary of State, George Marshall, on 18 January 1948:

> *"Between 800'000 and a million Jews in the Middle East and North Africa, exclusive of Palestine, are in 'the greatest danger of destruction' at the hands of Moslems being incited to holy war over the Partition of Palestine (...) Acts of violence already perpetrated, together with those contemplated, being clearly aimed at the total destruction of the Jews, constitute genocide which, under the resolutions of the General Assembly, is a crime against humanity."*(pp.175-76)

5. A recent example of such acts of violence is the *jihad*ist Al-Qaeda bombing of the ancient al-Ghariba synagogue of Djerba in Tunisia on 11 April 2002. That was not a simple accident, as first claimed by the Tunisian authorities; it was finally acknowledged as a criminal act after Germany insisted on a full enquiry (10 of the 17 dead were elderly German tourists, and many others were among the badly wounded). An Al-Qaeda spokesman recently claimed responsibility. Tunisian Jewry is now reduced to about 1,000 persons, a remnant of a biblical community with its roots in the ancient Phoenician past. Like 99% and more of their co-religionists before them, most will leave.

6. Pogroms and persecutions, and grave fears for their future, regularly preceeded the mass expulsions and exoduses of the Jews whose ancestors had inhabited these regions from time immemorial, well before successive waves of Arab conquest and occupation beginning in the seventh century.

7. More than 650,000 of the Jewish refugees were integrated into Israel's small area of 20,000 km^2 beginning in the 1950s, even while the country was threatened with annihilation by neighbouring Arab League States which, for over 40 years, refused the UN 1947 Palestine Partition Plan. A further approximately 300,000 Jews found refuge, and a new homeland, in Europe and the Americas.

8. Roughly half of Israel's 5 million Jews - its total population is about 6.2 million, of whom roughly 20% are Arab, Druze, and Bedouin Israelis - is now composed of these refugees and their descendants, who received no humanitarian aid from the United Nations, and who did not ask for it. It was the world Jewish communities, just emerging from the Shoah, who worked together with Israel to achieve this integration.

9. Yet it was the defiance of international legality by the Arab League in 1947-48, for decade after decade, in a failed attempt at politicide against the State of Israel, that led to the Arab Palestinian catastrophe. A parallel commitment on behalf of the less numerous Arab refugees of Palestine (in 1948 they numbered 550,000, although the figure of 750,000 is often quoted) to their integration in any of the 21 Arab States (covering 10% of the world's surface: 15 million km^2) was considered too great a sacrifice, in spite of their immense oil resources.

10. In Jordan, whose surface covered 77% of Palestine as recognized by the League of Nations in 1922, only partial integration was carried out for many decades. Turning a blind eye to article 15 of the Mandate, Britain had decided in 1922 that no Jews would be authorized either to reside or buy land in Transjordan. This decision was ratified by the Kingdom of Jordan in its law No. 6, sect. 3, of 3 April 1954, reactivated in law No. 7 of 1 April 1963, sect. 2, which states that any person could become a citizen of Jordan if he was not Jewish. When Jordan made peace with Israel in 1994, this *Judenrein* law remained.

11. George Orwell's remark about everyone being equal - except that "some are more equal than others" - could be applied also to refugees. Indeed, some refugees *are* considered more equal than others. But the forgotten millions - those Jewish refugees from Arab lands - were not helped by the UN, nor were they kept for over half a century in refugee camps breeding hopelessness and frustration, and a culture of hate and death. Orwell's remark might also be applied to scores of millions of refugee, on all continents, who were displaced during the many tragic conflicts throughout the 20th century.

12. The transfer of populations on a large scale, a consequence of war or for political reasons, has been a characteristic of human history, particularly in the Islamic Orient. Deportations, expropriations and expulsions of *dhimmis* - Jews, Christians, and other indigenous peoples - were recurrent throughout the long history of "*dhimmitude*," including in Palestine. One should question the real motivation of a selective memory, so historically flawed, which systematically spotlights the Arab refugees from Palestine, but not those forgotten millions - the Jewish refugees from Arab countries.

13. Security Council resolution 242 of 22 November 1967 (adamantly refused by the Khartoum Arab Summit Conference, with the formula: "no peace with Israel, no recognition of Israel, no negotiation with Israel, no concessions on the questions of Palestinian national rights.") refers to a just solution to the refugee problem; this implicitly included Jewish refugees from Arab countries, as well as Arab refugees from Palestine.

14. The dire hardships endured by the great majority of the Jewish refugees from Arab countries have never been considered by the United Nations, nor has the loss of their inestimable property and heritage dating back three thousand years. The time has come for this great injustice to be taken into consideration in the context of a just and equitable global solution to the ongoing Middle East tragedy.

15. The World Union for Progressive Judaism appeals to the Sub-Commission, and other appropriate UN bodies, to consider urgently the rights of these ancient Jewish minorities: (a) in relation to Mr. Asbjorne Eide' s forthcoming final report at its fifty-fifth session (2003); and (b) in relation to the working paper by Mr. Paulo Sérgio Pinheiro on the return of refugees' or displaced persons' property.

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Fifty-fourth session
Item 6 of the agenda

OTHER HUMAN RIGHTS ISSUES

Written statement* submitted by Asia-Japan Women's Resource Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 August 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201450 2*

ENG

Comfort Women: Systematic rape, sexual slavery and slavery-like practices
The Women's International War Crimes Tribunal and Its Judgment

Asia-Japan Women's Resource Center (AJWRC), in cooperation with Violence Against Women in War Network Japan (VAWW-NET Japan), wishes to draw the attention of the High Commissioner for Human Rights and of the Sub-Commission the Promotion and Protection of Human Rights (the Sub-Commission) to the Women's International War Crimes Tribunal on Japan's military sexual slavery. Its proceedings were held in Tokyo in December 2000, and its Final Judgment delivered in The Hague in December 2001.

The Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal (the Women's Tribunal) was global civil society's response to the failure of states to fully redress the crimes committed against the "comfort women". It was a Peoples' Tribunal based on the understanding that law is "an instrument of civil society". Women from countries and areas victimized by Japan's past aggression, and the perpetrating country Japan, formed the International Organizing Committee. Activists and legal experts from throughout the world served as advisors, prosecutors and judges. 64 survivors participated in the Tokyo Tribunal 2000. Two chief prosecutors, and prosecution teams from ten countries and areas including Japan itself, submitted evidence which included the testimonies of many survivors, expert witnesses, and two perpetrators, as well as archive materials such as official documents and personal diaries of the time.

The Judgment of the Women's Tribunal

In its Final Judgment (the Judgment), the Women's Tribunal found the Emperor Showa (Hirohito) and other high ranking officials of the Japanese military and government guilty of the crimes of rape and sexual slavery as crimes against humanity through the system of "comfort stations." It also held the State of Japan responsible for these crimes and liable for providing adequate reparations to survivors. It made various recommendations to the Japanese Government, the former Allies, the UN and the international community.

The Judgment is 1094 paragraphs or 265 pages long; the contents are as follows:

Part I	Introduction and Background of the Proceedings
Part II	Factual Findings
Part III	Applicable Law
Part IV	Individual Responsibility
Part V	Legal Findings and Verdicts
Part VI	State Responsibility
Part VII	Reparation
Part VIII	Conclusion

This Judgment is an important contribution to the human rights of past, present and future victims of armed conflict, especially to end impunity for wartime sexual violence and to the global history of justice at large.

The Tribunal's Factual Findings

The Judgment is the first comprehensive international document to assess detailed historical facts concerning the "comfort stations" system. It carefully examines how this system was introduced

and systematically expanded throughout the Asia-Pacific region, and brings the scale and gravity of damage to light through survivors' testimonies. Based on this comprehensive assessment, the Judgment confirms the system's "integral relation to the Japanese military aggression, as well as its sources in the prevailing misogynist and racist imperial culture" and recognizes the "incontrovertible evidence that the Japanese military cultivated a culture of oppression and violence, including sexual violence, against both men and women".

Rape and Sexual Slavery as Crimes against Humanity

The Judgment's careful examination of law from the 14th Century to the present day reveals that, although rape has been prohibited by laws of war since the Middle Ages, this prohibition was insufficiently explicit until the 1949 Geneva Conventions. This kept the crime invisible, cultivating a culture of wartime sexual violence. The post war trials, including the IMT in Nuremberg and IMTFE did not treat adequately the crimes of sexual violence. The claims brought by former "comfort women" have resulted in today's widespread recognition of the term "sexual slavery". The Judgment's elaborate examination and powerful recognition of these crimes as crimes against humanity will provide an invaluable precedent for the ICTY, the ICTR, and other future judicial bodies including the ICC.

Hirohito: the pronounced guilt of Head of State

The Judgment finds that the doctrine of sovereign immunity does not apply to responsibility for international crimes. Rejecting the claim that Emperor Hirohito was a mere figurehead, it acknowledges that, with his de jure and de facto power, he must have known about the "comfort women" system and should at least have stopped it, and therefore finds him guilty of the crimes of rape and sexual slavery as crimes against humanity. This people's tribunal is the first forum of law to adjudicate justice to Emperor Hirohito and, in fact, to pronounce a Head of State guilty.

Responsibility of the State of Japan

(1)Continuing Obligations and Violations of State Responsibility

The Judgment's "Continuing Obligations and Violations of State Responsibility" section should be highlighted for the Sub-Commission. These violations by the Japanese government include denial, concealment, distortion, failure to prosecute and punish those criminally responsible, refusal to provide reparations, failure to protect the integrity, well-being, and dignity of the whole human person, failure to take measures against discrimination rooted in nationalism, militarism, and gender, and failure to take measures to prevent recurrence.

The Judgment discusses appropriate forms of reparations to discharge the responsibility of a particular State. It fully examines, for instance, the Asian Women's Fund, which was set up to fulfil Japan's "moral responsibility," but finds that the fund "does not constitute an acceptable mechanism for compensating victims for the wrongs inflicted by the state."

The Judgment also discusses acceptable forms of apology. The Japanese Government's alleged apologies, which use language that avoids legal responsibility, and fail to directly address the affected individuals, are found deficient.

(2) The Principle of Obligation Erga Omnes

The Judgment's contribution to the international community at large can also be found in the following statements: "Crimes against humanity by definition are committed against individuals and not against states. Moreover, as obligations owed erga omnes, they constitute an offense

against the entire world community.""It is legally impossible for bilateral or multilateral agreements, even agreements concluded by the states of which the victims are nationals, to waive the interests of non-participating states in redressing a crime done to all." That this "all" refers to all individual members of the global community, rather than all States, deserves special emphasis.

Recommendations in the Judgement of the Women's Tribunal

With its moral authority, the Women's Tribunal makes recommendations based on its legal findings and the principles of human rights and justice. The Sub-Commission at 54th Session can ensure that Member states of the United Nations will serve the interests of their people by disseminating this Judgement, and implementing its recommendations. The Judgement's 17 recommendations include the following:

(1) To fulfil its responsibility, the Tribunal holds that the government of Japan must provide each of the following remedial measures:

1. Acknowledge fully its responsibility and liability for the establishment of the "comfort system", and that this system was in violation of international law.
2. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.
3. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.
4. Establish a mechanism for the thorough investigation into the system of military sexual slavery, for public access and historical preservation of the materials.
5 Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort women".

(2)The Tribunal further recommends that the former Allied nations:

1. Immediately declassify all military and governmental records concerning the establishment and operation of the "comfort" system and the reasons why it was not prosecuted before IMTFE.
2. Immediately declassify all military and governmental records concerning the failure to prosecute the Emperor HIROHITO before the IMTFE.
3. Acknowledge its own failures to investigate and prosecute the crimes committed against the former "comfort women" initially in the post war trials and since in the intervening 55 years.

(3)The Tribunal further recommends that the United Nations and all the states thereof:

1. Take all steps necessary to ensure that the government of Japan provides full reparations to the victims and survivors and those entitled to recover on account of the violations committed against them.
2. Seek an advisory opinion of the International Court of Justice as to the illegality and continuing liability of the government of Japan in regards to the former "comfort stations."

Finally, the Judgement reminds us that "while the names inscribed in history's page are often those of the men that commit the crimes, rather than the women that suffer them, this Judgement bears the names of the survivors that took the stage to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne."

Recommendations to the present Sub-Commission

1) The Sub-Commission should seize the opportunity of the Women's International War Crimes Tribunal Judgement to remind the government of Japan to discharge its state responsibility by implementing the recommendations.

2) The international community should accept the Tribunal's judgment as an official document of the 54th session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights so as to best serve both the survivors and the State of Japan.